

Malaysia UPR Pre- Session

The Death Penalty, Arbitrary Detention
& Torture

The Death Penalty

3rd UPR Cycle

- I. Partially accepted recommendations related to abolishing the death penalty
- II. Accepted recommendations related to **upholding rights of women, children, and persons with disabilities**, but compliance falls short in the context of death-eligible offences

Current Situation

- I. Mandatory death penalty abolished with death penalty offence removed for the crime of kidnapping and firearms offences
- II. 1020 individuals up for resentencing by the Federal Court

Death Penalty-related Rights

- I. Vulnerable **women** charged with capital offences, particularly foreign nationals faces gender bias and stereotypes in court processes. This is reflected in significantly higher average women on death row (9%) with majority being foreign nationals
- II. **Children** charged with capital offences remain detained indefinitely under His Majesty's pleasure (Section 97 of Child Act) with inconsistency and lack of enforcement in annual review processes
- III. **Persons with disabilities** or mental health issues being charged with capital crimes face an archaic threshold for the defence of insanity and can still be convicted and sentenced to death. Impacts of the death row phenomenon and solitary confinement remain largely unaddressed despite known reports of suicides and attempted suicides among death row inmates.

Arbitrary Detention & Fair Trial

3rd UPR Cycle

- I. Partially accepted recommendations on amending and/or repealing laws used to arbitrarily detain individuals, including the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1959 (POCA) and the Prevention of Terrorism Act 2015 (POTA) (United Kingdom, Spain)
- II. Accepted recommendation to accelerate consultations to review SOSMA, POCA and POTA (Georgia)

Current Situation

- I. POCA, POTA and DDA85 are laws that grants power of administrative detention of up to 2 years with options of indefinite extension.
- II. SOSMA provides police with discretionary power of extended remand period of 28 days with multiple reports of torture in custody in preceding years. SOSMA also restrict judicial power to grant bail pending trial processes, resulting in prolonged detention which exceeds the eventual sentence, compelling detainees to plea guilty irrespective guilt.
- III. POTA: the constitutionality of absence of judicial oversight was challenged by the apex court in 2022, with no action taken by the government to amend the legislation in line with this court ruling

Torture & Police Accountability

3rd UPR Cycle

- I. Took note of New Zealand's recommendation during UPR Cycle 2 about establishing an "Independent Police Complaints and Misconduct Commission in accordance with the recommendations of the 2005 Royal Commission"

Current Situation

The Independent Police Conduct Commission Act (IPCC) was passed in Parliament in 2022, but with significant gaps:

- I. Lack of institutional independence: Secretary of the Commission is selected by the Minister of Home Affairs; current and retired police officers can be members of the Commission
- II. No disciplinary power and no authority to compel the Police Force Commission to respond to recommendations given
- III. No powers to conduct search and seizures in investigations, conduct unannounced visits on places of detention, or compel submission of evidence if deemed 'prejudicial to national security/interest'

Custodial Death & Enforced Disappearances

3rd UPR Cycle

- I. Accepted Switzerland's recommendation to systematically conduct an "independent and impartial investigation" into human rights violation allegations in prisons. There are no updates on the status of this investigation

Current Situation

- I. Despite the Criminal Investigation Unit on Deaths in Custody (USJKT) being set up in 2022 to investigate deaths in police custody, there are gaps – lacking transparency in disclosure of custodial deaths and investigation findings, slow investigation progress due to manpower constraints
- II. Limited access to justice for families of deceased, due to lack of mandatory inquests for custodial deaths in non-police detention facilities and necessity for civil action for any form of compensation
- III. Limited to no systematic measures by the Immigration Department to prevent custodial deaths (which has been consistently placed first or second in prevalence over the last 8 years)
- IV. Investigation into enforced disappearance by the Human Rights Commission of Malaysia (SUHAKAM) was dismissed with further government investigation on the disappearance was kept classified

Recommendations on the Death Penalty

- Enact a Sentencing Reform Act which ensures the establishment of a Sentencing Council to review sentencing practices for all offences, including capital crimes, in line with the accepted recommendations in the 2018 UPR cycle.
- Ratify the International Covenant on Civil and Political Rights and the Second Optional Protocol of the Covenant
- Align the national legal framework with international law and standards on sentencing death-eligible offences, and ultimately abolish the death penalty totally.
- Publish disaggregated data of persons standing trial and convicted for offences carrying the death penalty
- Take measures to ensure that the clemency process is known by all death row convicts and their families and establish precise and transparent rules governing the pardon process and the functioning of the Boards of Pardon.
- Establish policies to ensure any person charged with a capital offence, including foreign nationals, has access to qualified legal counsel with prior experience in capital cases.



Recommendations on Death Penalty-related Rights

- Implement systems for defendants to have access to trained interpreters and ensure that they are available at all stages of a criminal case.
- Maintain the moratorium on executions pending further policy development
- Establish training programmes for capital defence counsel representing women, regarding gender-specific defences and mitigation in capital trials, encompassing trauma, gender-based violence, economic pressures, and family caretaking responsibilities
- Establish formal prosecution and sentencing guidelines for prosecuting cases involving gender-based violence and other vulnerabilities
- Review and formalize the review process for persons under detained at His Majesty's pleasure and establish limits on detention period.
- Prohibit the imposition of the death penalty on those with physical and mental health conditions or disabilities



Recommendation on Arbitrary Detention & Fair Trial

Amend and repeal all laws that permit arbitrary detention to be in line with international human rights standards, namely the Security Offences Special Measures Act 2012 (SOSMA), the Prevention of Crime Act 1960, the Prevention of Terrorism Act 2015 and the Dangerous Drugs (Special Preventive Measures) Act 1985

Recommendations on Torture & Police Accountability

- Amend the Independent Police Conduct Commission Act in line with recommendations of the 2005 Royal Commission to Enhance the Operations and Management of the Royal Malaysia Police
- Ratify the Convention against Torture and its Optional Protocol
- Introduce provisions in the Penal Code prohibiting the use of torture by state actors in all circumstances

Recommendations on Custodial Death & Enforced Disappearances

- Strengthen USJKT's functioning by increasing the quantity and quality of capable personnel and addressing external factors that affect investigation capacity.
- Amend the Criminal Procedural Code to mandate inquests for all custodial deaths in all detention, correctional and rehabilitation facilities operated by the government, with the enactment of a Coroner's Court Act to ensure high quality of inquests.
- Collaborate with the National Human Rights Commission of Malaysia (SUHAKAM) to develop and conduct training modules for immigration officers that incorporate human rights elements and the prohibition of torture and other forms of degrading and inhuman treatment.
- Publish the report findings from the government investigation into the disappearance of Raymond Koh, Amri Che Mat, Joshua and Ruth Hilmy.